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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FACETIME COMMUNICATIONS, INC.,

Plaintiff,

v.

REUTERS LIMITED,

Defendant.

**DOCUMENT ELECTRONICALLY FILED**

Civil Action No. 08-4730 (CM)

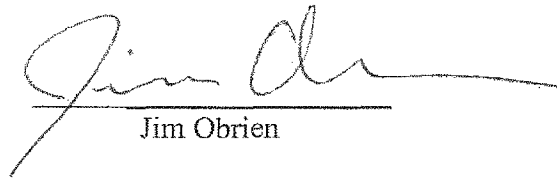
**SUPPLEMENTAL DECLARATION OF  
JIM OBRIEN IN SUPPORT OF  
PLAINTIFF FACETIME'S MOTION FOR  
SUMMARY JUDGMENT**

I, **JIM OBRIEN**, being of full age, hereby declare as follows:

1. I am an attorney-at-law in the State of California, and I am the General Counsel of Plaintiff FaceTime Communications, Inc. ("FaceTime"). I make this supplemental declaration to put forth a document that is referenced in FaceTime's reply brief in support of its motion for summary judgment, and in opposition to Defendant Reuters' cross-motion to dismiss the complaint or for judgment on the pleadings.

2. I was involved in drafting certain portions of the Source Code Licensing Agreement between FaceTime and Reuters, dated January 31, 2006. Attached as Exhibit A is the "Definitions" portion of the Agreement.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing  
is true and correct.



Jim O'Brien

Dated: July 9, 2008

# **EXHIBIT A**

## Source Code Licensing Agreement

### EXHIBIT A

#### DEFINITIONS

In addition to terms defined throughout the Agreement, the following terms shall have the meanings as set forth herein:

1. **"Additional Functionality"** means software functionality to be developed for the IMA Software during the Term which shall consist of: (i) support for RMChat, (ii) support for multi-tenancy, and (iii) support for RMForms, and shall be defined as complying in all material respects to the specifications contained in Exhibit D. The Additional Functionality shall consist of such software functionality as it exists on the date of delivery, excluding any subsequent upgrades.
2. **"End User"** means a user of a Derivative Work or a Reuters Group sales prospect using a Derivative Works for evaluation purposes or a Reuters Group customer purchasing (being either individual users or a corporate customer of the Reuters Group purchasing a license for and on behalf of its employees and contractors) a license to a Derivative Work for internal business purposes, and not for redistribution.
3. **"IMA Software"** means the code base of IMAuditor Version 7.0, or such later version as may be available on the date that the Source Code for the IMA Software is to be provided to Reuters by FaceTime under the terms of this Agreement, as such version exists on the date of delivery, but not including the network protocol stacks of any non Reuters Messaging networks (except for the Object Code version of the IMA Software for the connector mode to support LCS as specified) and excluding any subsequent upgrades. For the avoidance of doubt, the IMA Software may only be configured as a proxy when used in connection with the current functionality of the Reuters Messaging Service or Reuters Messaging 5.0 provided as a service from the Reuters data center.
4. **"IMRelay"** means the FaceTime IM Proxy product, designed to be deployed in the DMZ and used to allow i) protocols to traverse the DMZ within a proxy server protecting the internal network from denial-of-service attacks and ii) acting as a access proxy to support external user scenarios.
5. **"Intellectual Property Rights"** means any and all by whatever name or term known or designated tangible and intangible, now known or hereafter existing (a) rights associated with works of authorship throughout the world, including but not limited to all exclusive exploitation rights, copyrights, neighboring rights, and moral rights, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other proprietary rights of every kind and nature throughout the world, however designated (including without limitation, logos, character rights, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license or otherwise, and (f) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force throughout the world.
6. **"Perpetual License Option"** has the meaning ascribed to it in Section 6.2.
7. **"Replacement Provider"** means Reuters or any member of the Reuters Group or any third party that assumes responsibility for provision of any service (including the provision of any software) replacing the Licensed Materials and Related Materials in place of FaceTime after the termination of this Agreement or expiry of the Initial Term, as more particularly described in Section 8.4.2.
8. **"Reuters Group"** means all or any of the following from time to time: Reuters, its direct and indirect Subsidiaries and any parent of Reuters, and all other Subsidiaries of any parent of Reuters. Subsidiary means a company in which another company owns directly or indirectly more than 50% of the issued share capital and over which it exercises effective control.
9. **"Reuters Messaging 5.0"** means the Reuters product as specified further in the Reuters Messaging 5.0 product documentation and consists of the functionality currently available in the

## Source Code Licensing Agreement

Reuters Messaging Service with the addition of the functionality provided by RMChat, RMConnectivity and RMForms.

10. **"Reuters Messaging Service"** means the instant messaging service offered by members of the Reuters Group consisting of a Reuters branded (or Reuters co-branded) instant messaging client connecting to a Reuters data center and communicating over Reuters' single-protocol SIP (as defined in section 2.4.1) -based instant messaging network.
11. **"RMCM Customized Product"** means the customized version of its IMA Software product to create an "on-premise" enterprise software solution to (1) capture, log, audit, provide reporting on Reuters Messaging Service instant messages (2) export Reuters Messaging traffic for archival storage either with the customized version of the IMA Software or other archiving solutions, as further described in the Product Customization and Licensing Agreement between the Parties, dated September 29, 2004, and as such customized version exists on the of the date of delivery, excluding any subsequent upgrades.
12. **"RTMatrix"** means the FaceTime IM application server product that includes software developer kit, documentation, application examples which are used to create IM applications such as IM bots, IM alerts and IM filters.
13. **"Term"** means the duration of the Agreement, which in the event Reuters does not elect to acquire a perpetual license to the Licensed Materials shall be the Initial Term, and if Reuters does elect to acquire a perpetual license to the Licensed Materials shall be the Initial Term plus the Perpetual Term.
14. **"Third Party Reseller"** means any company(ies) authorized by Reuters to market, distribute and sublicense the Derivative Works in an on-premise software form, provided such companies are not competitors of FaceTime.